IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1167 of 1998
in
SPECIAL CIVIL APPLICATION No 7070 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

GUJARAT MARITIME BOARD

Versus

JASUBHAI DEVJIBHAI JHALA

Appearance:
MS SEJAL K MANDAVIA for Appellant
MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 17/04/2000

ORAL JUDGEMENT (Per D.H.Waghela, J.)

Heard the learned counsel for the parties.

2. The respondent workman after being discharged from duty raised a dispute and upon the same being referred, the Labour Court awarded reinstatement with 25% backwages and costs of Rs.1,500. The award was challenged by the appellant by way of a Special Civil Application in which taking note of the fact that by virtue of the material produced by the appellants themselves it appeared that the workman had completed 241 days of service, the learned Single Judge upheld the finding recorded by the Labour Court that the respondent was illegally retrenched and refused to interfere with the award.

2. The learned counsel appearing for the appellant has reiterated and emphasised that the workman had not completed 240 days of service in the sense that she had not actually worked for 240 days. In support of her submission, the judgment of the Apex Court in WORKMEN OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION v. MANAGEMENT OF AMERICAN EXPRESS INTERNATIONAL BANKING CORPORATION (AIR 1986 SC 458) has been relied upon. This decision hardly supports the appellant as can be seen from the following observation contained therein:

> "The expression 'actually worked under the employer' cannot mean those days only when the workmen worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. Thus, Sundays and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workman could be said to have actually worked."

3. In the facts of the present case, as stated earlier, the appellant had produced a statement before the Labour Court showing that the number of working days were 241 if the public holidays and weekly holidays were included. Therefore, we have no hesitation in holding that the Labour Court was right in coming to the conclusion that the workman had completed 241 days and the termination of his service was in contravention of the provisions of Section 25-F of the Industrial Disputes Act.

4. The learned counsel for the appellant has further submitted that the workman while filing his statement of claim had mentioned the date of termination to be 1.8.1989 whereas 241 days of working were completed only in October 1989. We do not find any substance in this submission, since the Labour Court has decided the dispute within the broad terms of reference of the dispute as to whether the workman should be reinstated with full backwages or not.

5. We, therefore, do not find any valid reason to interfere with the order of the learned Single Judge. The appeal is, therefore, dismissed and the notice is discharged with no order as to costs.

(KMG Thilake)

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